

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LAKISHA T. SMITH,

Plaintiff,

vs.

STELLAR RECOVERY, INC. and  
COMCAST CORPORATION, and  
COMCAST OF DETROIT, LLC,

Defendants.

Case No.: 15-cv-11717  
Hon. Stephen J. Murphy, III  
Hon. Magistrate Mona K. Majzoub

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**DEFENDANT, STELLAR RECOVERY, INC'S, NOTICE OF FILING SUPPLEMENTAL AUTHORITY IN SUPPORT OF DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT WITH SUPPORTING MEMORANDUM OF LAW**

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COMES NOW, Defendant, Stellar Recovery, Inc. ("Stellar"), by and through its undersigned counsel, and hereby files this Notice of Filing Supplemental Authority in support of Defendant's Motion for Partial Summary Judgment with Supporting Memorandum of Law [DE 44], and attaches a true and correct copy of the United States District Court, Northern District of Georgia's Order [DE 65] on the Parties' respective Motions for Summary Judgment [DE 34, DE 37] entered on August 12, 2016 in the case styled, *Colette Jenkins v. mGage, LLC, et al.*, Case No. 1:14-cv-02791-WSD, as attached hereto.

One of the main issues in the instant case and Defendant Stellar Recovery, Inc.'s pending Motion for Partial Summary Judgment is whether an ATDS was used in calling the Plaintiff. In *Colette Jenkins v. mGage, LLC, et al.*, the Court granted Summary Judgment in Defendant's favor, concluding that as "human intervention discredits that a communication system is an ATDS...[and] the uncontested evidence shows human intervention was required to send each text message...[Plaintiff's] claims fail as a matter of law because [s]he failed to establish a genuine

issue for trial with respect to whether the [texts] were [sent] using an ATDS, a necessary element of [her] claims.” *Id.* at 18-19. Important to this conclusion regarding human intervention by the Court was the fact that Defendant’s employees had to navigate a website and log in to the platform and click send.

WHEREFORE, Defendant Stellar Recovery, Inc. hereby requests that this Court consider this case, which was decided after Defendant filed their Motion for Partial Summary Judgment, as supplemental authority in support of their motion.

Dated this 6th day of September, 2016.

Respectfully submitted,

/s/Alison N. Emery  
Alison N. Emery  
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#### **CERTIFICATE OF SERVICE**

I, Alison Emery, Counsel for Stellar Recovery, hereby certify that on September 6, 2016 I electronically filed the foregoing document with the Clerk of Court for the United States District Court, Eastern District of Michigan, Southern Division, using the ECF system which will send notification of such filing to the attorneys of record.

Respectfully submitted,

/s/Alison N. Emery  
Alison N. Emery